UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/43
24 June 1991

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Item 18 of the provisional agenda

PROTECTION OF MINORITIES

Preliminary report submitted by Mr. Asbjørn Eide

Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities

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GE.91-12251/3345B

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PREFACE

This progress report is submitted at a time when there is everywhere a feeling of increasing urgency concerning the problem of minorities. Various efforts are under way at the United Nations, the Council of Europe, the Conference on Security and Co-operation in Europe, and among non-governmental organizations to find constructive approaches to the issues raised. Therefore it is essential that a thorough analysis of them be made by the Sub-Commission; my efforts will be only a contribution to that purpose. The deliberations at the sessions in 1989 and 1990 indicated that we are all concerned with the need to find constructive answers to the dilemmas posed.

In doing so, information about national experience is essential. A questionnaire has been sent out; so far, there have been only a few responses but many more are expected. I am very grateful to those who have responded, and hope that many others will follow their example.

There is another source of information: the reports presented by States to the treaty-monitoring bodies. Many of these contain highly relevant material. Due to short staffing in the United Nations Centre for Human Rights, not all these reports have been collected and the information contained in them has not yet been tapped. The Centre for Human Rights is overloaded, but it is my hope that next year we shall be able to make a major effort to make use of this material in conjunction with the responses expected from Governments, United Nations specialized agencies and non-governmental organizations.

Since this is a progress report, it is at this time more important to discuss questions than to give final answers. On several points, therefore, questions have been raised on which the present rapporteur would like to have comments from Sub-Commission members and observers, including government representatives and non-governmental organizations.

INTRODUCTION: MANDATE GUIDELINES AND APPROACHES

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1989/44 of 1 September 1989, decided to entrust Mr. Asbjørn Eide with the preparation of a report on national experiences regarding peaceful and constructive solutions of problems involving minorities. This resolution was endorsed by Commission on Human Rights decision 1990/105 of 6 March 1990.

2. A progress report was presented by Mr. Eide to the forty-second session of the Sub-Commission (E/CN.4/Sub.2/1990/46). In that report, he outlined for discussion by the Sub-Commission the basic approach suggested for the study. The Sub-Commission discussed the report at three meetings (E/CN.4/Sub.2/1990/SR.8-10) and endorsed in general the approach chosen, including the contents of the questionnaire to be used, with some minor modifications. Members and observers made valuable comments which helped to give more precision to the guidelines. These observations are reflected in chapter II.

3. In its resolution 1990/5, the Sub-Commission expressed its deep appreciation to the Special Rapporteur for his informative and useful progress report (E/CN.4/Sub.2/1990/46); endorsed the research methods proposed by him for the study in chapter V of his progress report and requested him to submit a preliminary report to the Sub-Commission at its forty-third session on the progress made in his study. The study was also discussed by the Commission on Human Rights at its forty-seventh session in 1991. The Commission adopted resolution 1991/62 in which it also expressed its deep appreciation to the Special Rapporteur for his progress report; endorsed the methods proposed by him for further study and requested him to submit a preliminary report to the Sub-Commission at its forty-third session. The present report has been prepared in response to those resolutions.

4. The Sub-Commission at its forty-first session, examined a working paper prepared by Ms. Claire Palley (E/CN.4/Sub.2/1989/43). It adopted resolution 1990/44 by which it decided that the guidelines contained in that paper should be taken into account in the preparation of the study.

5. The study will therefore by based on a review of national experiences in light of the guidelines adopted. Account will also be taken of the current international efforts, both in the United Nations and in regional organizations, to draft instruments on the rights of minorities.

6. Information about national experiences will mainly be sought in two ways. The questionnaire presented to the Sub-Commission and modified by it, was transmitted on ... to Governments, specialized agencies and non-governmental organizations. (The questionnaire is attached at annex.) By 15 June 1991, replies had been received from 12 Governments, 1 specialized agency (UNESCO) and 5 non-governmental organizations. It is expected that a great number of additional answers will be received in the course of the next year. Partly for this reason, the present progress report does not examine in depth the answers so far received.

7. The second major source of information will be the use of States' reports presented over the last decades to United Nations treaty-monitoring bodies. Of particular importance will be the reports submitted under the International Covenant on Civil and Political Rights, particularly under its article 27, and the International Convention on the Elimination of All Forms of Racial Discrimination. Other reports will also be examined, as will the discussions in the relevant meetings of the committees concerned.

8. By June 1991, the efforts to collect these reports had not been completed, nor had it been possible to start the analysis of the very substantial material contained therein. It is estimated that some 1,400 reports will have to be reviewed. The work involved requires very substantial and time-consuming efforts, which have not yet been carried out. It is very much hoped that the Centre for Human Rights will be able to make available sufficient personnel resources to carry out this work.

9. Some comments were made at the previous session of the Sub-Commission concerning the collection of information. Responding to my statement that my primary information would be based partly on the replies to the questionnaires and partly on the information provided by States in their reports to the treaty-monitoring bodies, one of the Sub-Commission members argued that this would be unsatisfactory since States were not always sincere. He expressed the view that academic research and information from humanitarian organizations might be more relevant. While I shall also draw on such material, the data contained in the numerous reports submitted by States to the United Nations during the last 10 to 15 years are substantial. Many States have presented a number of periodic reports. An examination of the shifts in content over time may reveal interesting changes in approach, which may themselves indicate that a learning process is taking place. When we also take into account the comments and observations made by members of the committees examining the reports, an interesting and useful picture may emerge.

10. Information from non-governmental organizations is also essential to elucidate matters which concern us here. It needs to be emphasized however, that the main task now is not to try to focus on violations of human rights, but rather to look for models which may facilitate peaceful and constructive solutions. It is therefore incumbent on everyone, States as well as non-governmental organizations, to concentrate on positive approaches that are conceivable rather than the negative approaches that are held to have been pursued in some cases.

11. In this connection, however, it would be of great help if Governments, in responding to the questionnaire, were prepared not only to provide information about the solutions used, but also on the problems that they have encountered. This has rarely been done in the responses so far obtained.

12. It has been and remains my position that we should not start with a definition. The questionnaire, in its introductory point 6 (see annex), states that "The study does not make use of a precise definition of 'minorities'. The term is used here in a very broad sense, meaning nationalities, ethnic, linguistic or cultural groups which in significant respects are different from other groups in a sovereign State." UNESCO, in its reply to the questionnaire, argues that a more rigorous working definition

of the term might be necessary. According to UNESCO the questionnaire as it now stands leaves it to Governments to decide arbitrarily whether there are minorities in their country or not. This is true, but it is so intended. It is of great use to know the opinion of the respective Governments on what minorities they consider to exist in their country. This will then be compared to other information, from non-governmental organizations and other sources. A discrepancy between the answers, will give rise to interesting questions concerning the policies of recognition pursued by different Governments.

13. Some of my collegues at the 1990 session also wondered whether it was possible at all to carry out the study without a definition. Mr. Waleed Sadi, arguing that a definition was required, pointed out that there are different categories of minorities, in need of different kinds of rights. On this point I agree, but for this very reason I still hold that a definition should not yet be used, beyond the loose formulation contained in the introduction to the questionnaire.

14. There is also a pragmatic reason. As pointed out in my 1990 preliminary report, the Sub-Commission has repeatedly tried since 1947 to adopt a definition of minorities, the latest attempt being the effort by our former colleague, Mr. Jules Dechênes, in 1985, whose draft definition failed to meet with general approval by the Sub-Commission.

15. If I were to start my task with a working definition, I would not be able to carry out the study. It is my hope that when the study is completed, we will be in a better position to decide what are the most relevant and important components of a definition of minorities.

16. The scope of the study will have to be addressed, however. A major question is whether religious minorities should be included. My intention has so far been to leave out this category since it is the subject not only of a special declaration - the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief but also of a special procedure, the thematic rapporteur of the Commission on Human Rights. Several replies by non-governmental organizations to the questionnaire have again, however, called for the inclusion of religious minorities (Baha'i International Community, International Catholic Migration Commission, Federation Terre des Hommes). They have reminded us that article 27 of the International Convention on Civil and Political Rights covers religious minorities as well as cultural and linguistic groups, and that the draft declaration on the rights of persons belonging to minorities also includes religious groups.

17. Upon reflection I recognize that we cannot easily separate the ethnic identification from the religious. In many cases it is unclear whether a given group is essentially a religious or an ethnic community. The self-identification of a group may focus on its national or ethnic character while the Government of the State in which it lives may prefer to define it as a religious entity.

18. In some parts of the world, religious freedom is now well established while recognition of the existence of national minorities encounters more political resistance. I shall return to this point in the final version of the study.

19. In view of the foregoing, I have decided to broaden the scope of the study to include religious minorities. I would, however, be pleased to have the views of colleagues in the Sub-Commission on this question. What is embraced by the study, therefore, are national, ethnic, religious, cultural and linguistic groups which in significant ways differ from the majority and are non-dominant in the societies in which they live.

I. ANALYSIS: PURPOSE AND GUIDELINES

A. Purpose

20. The purpose of this study is to explore peaceful and constructive solutions to situations involving minorities. Why this should be done is quite obvious. Ms. Halima Warzasi, during last year's discussion, pointed out that the resurgence of nationalism in recent years was such that if Governments did not take strong action, the situation of minorities in many parts of the world would become quite unliveable. On the other hand, members of some minorities sometimes pursued unacceptable policies and used violent means which were destabilizing and destructive. There was an urgent need, she said, for approaches which could accommodate the justified concerns of minorities while facilitating peaceful relations and social progress in the society at large.

21. Mr. Ahmed Khalifa argued during the 1990 discussion that, in the light of the dramatic situation facing us, we should ascertain what the minorities wanted. Two issues arise from this. First, how should we proceed in order to obtain the views of the minorities? One possibility is that Governments, before responding to the questionnaire, might bring to the attention of the organizations of the various minorities in the country concerned and include their views in the response; another would be through information provided by non-governmental organizations. I would welcome views by members and observers on this point.

22. The second issue concerns the rights to be adopted at the international level for (members of) minorities, the subject of drafting now taking place in the Commission on Human Rights. The present study does not, at this stage, intend to deal with international rights of minorities, since its focus is on national experiences. It is my assumption that the completed study will be of use in the final drafting, or application, of the declaration because it will reveal the widely different approaches to the question which depend on the particular nature of the individual situations.

23. It is essential not to take a position on the question of rights of minorities based only on the experience of one's own particular society or one's own particular region in the world. The way history has unfolded in the various parts of the world has given rise to dissimilar situations with respect to minorities. Strict positions on the rights of minorities, seeking one set of rights applicable to all, may not be helpful.

24. There are, however, some basic principles which have to be adhered to at all times; most of those basic principles are found in the guidelines to this study and will therefore form the bases of the analysis of the responses given. The information provided will be systematized in chapter III on the basis of the framework used in the questionnaire.

25. This study can hopefully contribute to a learning process. Insights drawn from different national experiences can help to improve understanding of the several ways in which situations involving minorities can be handled. Lessons can then be drawn from both successful and less successful experiences.

To learn does not only mean to increase the level of knowledge, but, more importantly, to provide a reservoir of ideas for improved approaches to the different situations.

B. Guidelines

Guideline 1: The paramount importance of non-discrimination, as well as the full participation of all individuals and groups, as contained in the two international covenants on human rights and the Declaration on the Right to Development

26. Since the search for peaceful and constructive solutions shall here be examined within the framework of the international human rights systems, the starting point must be the International Bill of Human Rights. The foundation is article 1 of the Universal Declaration:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Equality in the enjoyment of human rights requires abstention from and prevention of discrimination; equality in dignity requires respect for the self-identification of the individual with his or her group.

27. The principle of non-discrimination, if properly applied to situations involving minorities, can go a long way in preventing conflicts. Very often, the origin of religious, national or ethnic disputes can be traced to the lack of a respect for ordinary individual human rights on an impartial basis. This has long been a primary concern of the Sub-Commission, and reference should again be made to the many important studies on this subject carried out over many years by its Special Rapporteurs.

28. The importance has repeatedly been underlined of ensuring full impartiality in the administration of justice, and particularly in the performance of their duties by law enforcement officials and security forces. Many serious ethnic or religious conflicts arise where the administration of justice or law enforcement is seen to be partial. This can cause minorities to feel that they are not adequately protected by the agencies of law and order. Ultimately, that can lead them to take the law into their own hands, a situation which can very easily degenerate into open warfare.

29. At the base of any effort to solve minority problems should therefore be a properly constituted system for the preservation of the rule of law on which everyone can rely, and a full-fledged democracy allowing for the free expression of different views, opinions and values by all segments of society. Minorities should neither be prevented from enjoying equal freedom, nor should they be given special privileges. What this means in practice requires careful analysis, a question which will be examined under Guideline 4.

30. Full application of the principle of non-discrimination to preserve the equal dignity of all has a number of further consequences. I would welcome discussion on the following issues:

31. The right to freedom of association, if applied without discrimination, also means that religious, ethnic and national groups can establish their own associations. Freedom of expression and information means that they can express themselves, and seek information, orally and in writing, in the language they prefer, including their mother tongue. Freedom to participate in the cultural life of the community, in accordance with article 26 of the Universal Declaration, means that they can do so within the community constituted by their minority group. But how far can this interpretation give us guidance?

32. If the State provides resources to facilitate flows of information, to cultural activities and to religious communities, should a proportional share not be given to such activities of minorities in order to avoid the challenge of discrimination? Can the same argument be used in regard to resources provided for education? What would be the implication of a positive answer to this question?

33. The analysis of the substantial and positive implications of the principle of non-discrimination for minorities, if connected with the preservation of equal dignity, may not yet have been fully exhausted. There are probably only three basic limitations to be observed which of course apply to the majority as well as to minorities: (a) minorities cannot demand special privileges and thus obtain a better status than the others in society; (b) they cannot make use of their religious freedom or practice their culture in ways which impede the equal exercise by others of their religion or their culture; (c) their activities must not violate public order as this is understood in a fully democratic society.

34. Full and equal participation is provided for in several human rights instruments: article 21 of the Universal Declaration, article 25 of the Convention on Civil and Political Rights and article 1 of the Declaration on the Right to Development. Its implications with respect to minorities need to be further studied, however. Participation should be on two levels: within the society as a whole, and within the smaller community of the minority.

35. At this stage we begin to confront issues of a complex nature, involving constitutional and administrative arrangements which depend on the nature of the different situations. No effort will be made to explore the possible arrangements, which could include federal structures, devolution of power, advisory assemblies, and special representation in government bodies at the national and local level.

36. Dilemmas can arise in regard to full participation because different groups may have different priorities with respect to development. Some may put greater emphasis on economic growth, others greater emphasis on the protection and preservation of the natural resources, and others on the protection of the traditional ways of life. Thus, equal participation is not as simple in practice as it might appear in theory. These issues will be further examined below, under Guideline 5.

Guideline 2: The necessity of promoting the rights and development of minorities in a manner that is consistent with the unity and stability of States, in light of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations

37. In all discussions at the international level about minority rights, the need to safeguard the stability of States has been emphasized. A primary concern of all Governments is to maintain the political independence and territorial integrity of their own State, and to ensure that their sovereignty and integrity are respected by other States. Contemporary international law, as reflected in the Declaration cited above, makes this point clear.

38. The most important principle is the right of peoples to self-determination, both external and internal. The former consists of a people determining its own status - deciding whether it should possess statehood by itself or be part of another State. The exercise of this right is limited, in customary international law, to peoples under colonialism or subjected to alien occupation, domination or exploitation. What this means is a subject of controversy and will not be examined here. More important for the purpose of this study is the right to internal self-determination, which is the right of a people living within an independent and sovereign State freely to choose its own government, i.e. to adopt representative institutions and periodically or at reasonable intervals to elect their representatives through a free procedure and with the freedom to choose among candidates or parties. This can be accomplished through a unitary state system, a federal system, or a system with arrangements for autonomy (home rule) or devolution of power.

39. Internal self-determination is intimately linked with the notion of pluralist democracy. The key to the right to internal self-determination is partly to be found in article 25 of the Universal Declaration and partly in the Declaration on Friendly Relations, which states:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which could dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above **and thus possessed of a government representing the whole people without distinction as to race, creed or colour.**"

This clearly emphasizes the principle that the Government must be representative of the whole people over which it claims to have jurisdiction, which means that the people must be able to choose its government and that everyone, without discrimination, is equally entitled to take part, on each occasion of election, in that choice. It may be found suitable to subdivide jurisdictions in regard to some aspects of authority. This process, which should be done through peaceful negotiation, should make it easier for ethnic groups or nationalities within the State to control their own fate in certain functional areas, which may strengthen rather than weaken the self-determination of the various sectors of the population. In other cases it would have negative consequences. No general model for solutions of these issues is like to emerge.

40. There are obligations incumbent both on the States in which minorities live and on other States. The former should give access to the decision-making to any group existing in that country, while the latter should abstain from any action which would tend to violate the integrity of any State. Thus, a set of reciprocal expectations apply to both States.

41. A group which constitutes a national minority in one country may be the dominant group in another country. The latter should not seek to destabilize the former by encouraging secessionist movements or engaging in direct intervention. On the other hand, the States in which the minorities live should seek constructive ways in which to relate to them; this would facilitate peaceful and confident relations with its neighbour. We should recognize that it will be difficult at times for outside Governments to remain silent and passive when a group belonging to its own nationality is subject to serious discrimination and persecution in a different country, especially in a neighbouring country. A delicate balance, therefore, must be struck between the two neighbours. Adherence to the principle of respect for the integrity and stability of States is particularly important in such circumstances.

42. The non-recognition of the rights of minorities can increase instability by encouraging subversive action over open political activity. Thus, it is crucial for Governments to find the appropriate formula by which the different groups in society can be accommodated in a peaceful and democratic manner, thereby avoiding both a complete rejection of minority concerns and also minimizing the chances of external intervention which would destabilize the country.

Guideline 3: The danger posed by ethnic conflict for regional as well as national security

43. This study explores possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities because of the potentially very serious nature of ethnic and religious conflicts and the dangers these pose both to regional and to national security.

44. National and even personal security are negatively affected by ethnic and religious conflicts, which often lead to serious social disruption, to internally displaced populations and to international refugee flows. These phenomena are not only destabilizing, but they create severe obstacles to the realization of human rights for all.

45. Irrational dynamics have often been observed in such conflicts. In the early stages there may be nothing more than feelings of unease concerning alleged discrimination. Rumours emerge and are easily believed. Allegations are gradually combined with protests and political demonstrations. If at that point security forces overreact, it can constitute a self-fulfilling prophecy which is then exploited by the self-appointed militants among the minority, responding in kind to the action by the security forces, which in turn can lead to new and more violent responses by the latter. It should not be excluded that the violence is deliberately provoked by militants on both sides, with the purpose of agitating public opinion and creating polarization and confrontation leading eventually to massacres and reprisals by both

sides. Eventually this can degenerate into a guerrilla/counterguerilla situation including extralegal executions and internal repression on both sides.

46. It is important to stop this evil spiral in its early stages. This cannot be done simply by repressive measures, but rather requires communication and dialogue between the parties. However, the problem is to find acceptable compromises. This depends also on what they expect in terms of external support, expectations which often are exaggerated but which nevertheless can make the minorities intransigent in their demands to the Government.

47. In such circumstances, it is essential that principles of humanitarian law are taken into account. Here it is necessary to recognize that international humanitarian law is very weak in regard to internal conflicts. Recent studies of this issue have demonstrated the need for parties to take much stronger precautions to avoid an escalation of the conflict.

48. Important also are early warning and early action. When members of a minority start to assert vociferously that it is subject to systematic discrimination, the Government and the international community should quickly explore the case. It may be a wrong assertion in objective terms, but even so it can lead to a tragic spiral of violence. In such cases, much could be achieved if domestic recourse procedures existed to settle the allegations of discrimination at an early stage. Such mechanisms exist in many countries today, but not in all. Individual procedures through domestic courts may be too slow and ineffective in such circumstances. Justice must be done, and seen to be done, quickly.

49. Recent figures show that internal conflicts occur in a wide range of countries. The risks of such disputes spilling over into the international arena are substantial. The dangers of intervention and counter-intervention loom. Sometimes this is limited to the delivery of arms and other support to one or the other of the contending parties, but on some occasions it takes the form of direct, open military participation by external forces.

50. Regional peace is endangered by such conflicts when the fate of a given minority is of paramount concern to another State. The risk of interference by that State leads to insecurity and can also be exploited by militants among the minorities; a State may find it difficult to resist domestic public opinion which demands action when serious violations of a related minority are claimed to take place in a neighbouring State.

51. Sometimes such action is held to be justified as a humanitarian intervention, and it cannot be denied that this does occur. However, it should be generally agreed that it is better to avoid such situations, but to do so requires efforts by both sides to settle the conflict by peaceful means.

52. It is therefore quite appropriate to stress, as did Ms. Warzasi during the 1990 session of the Sub-Commission, that

> "the solution to the minority problem must be based on three indispensable conditions, namely the political will of the State having

minorities; the will of the various communities to live together in peace and harmony, and consequently, to get to know and respect one another; and the cooperation and positive assistance of the State which felt itself concerned by a minority problem even though it was not the State in which the minorities lived." (E/CN.4/1990/SR.9, para. 20)

The best way to prevent external intervention is to find constructive domestic solutions based on consistent confidence-building efforts. It is also desirable to develop international mechanisms which allows the parties to address the international community for purposes of conflict resolution. When it is claimed that national recourse institutions are biased and political, international recourse mechanisms could act as an important safety valve. In the final version of this study, the question of domestic and international institutions and procedures for conflict resolution will therefore be given prominent attention.

53. Some, but not all, established international institutions can be applied in many of these situations. The combination of article 27 of the Covenant on Civil and Political Rights, with its Optional Protocol, and the application of article 14 of the Committee on the Elimination of Racial Discrimination would open up possibilities for the parties to address the international community. But this is not sufficient to solve the basic conflicts over the range of rights that should be enjoyed by minorities.

Guideline 4: The importance of both negative (non-discrimination) and positive (special assistance or status) measures for the effective protection of human rights

54. From a human rights perspective, three issues are important. Firstly, members of minorities should enjoy all the basic human rights (civil, political, economic, social and cultural) in the same way as all others, without discrimination. For this to happen, non-discrimination measures are essential, as discussed above. Secondly, minorities should be allowed to preserve their dignity as members of a particular community based on religion, language or culture. This may or may not require special measures. Thirdly, in some cases they may need protection for the material basis of their culture and lifestyles. This will undoubtedly require special measures. A brief discussion of these three aspects follows.

55. We should first deal with those questions which concern merely an application of the principle of non-discrimination, combined with respect for equal dignity. It has been suggested above that measures adopted by the State for the majority (support to religious institutions, culture, etc.) should also be made available for minorities in their pursuit of similar aims. These would then not constitute special measures or confer special status, but would merely represent equal treatment. The notion of special assistance or status should therefore refer only to measures made for minorities without the provision of corresponding measures for majorities.

56. The only justification for doing this would be to restore equality where there had, in the past, been inequality, or where structural factors make equality difficult to preserve in the absence of special measures. The United Nations Human Rights Committee, in its General Comment No. 18 (37) on

non-discrimination, has defined special measures as legislative, administrative steps taken for the benefit of certain groups and their members, aimed at achieving equality in fact with other groups and in order to diminish or eliminate conditions which cause or help to perpetuate discrimination.

57. The issue of special measures or status has often been addressed in the practice of the Committee on the Elimination of Racial Discrimination, and the experiences gathered through its work will be of great significance in the future analysis of responses in regard to this guideline. In the International Convention on the Elimination of All Forms of Racial Discrimination the following formula is used:

> "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups and individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved." (art. 1 (4))

58. Equality in law precludes discrimination of any kind, whereas equality in fact may involve the necessity of different treatment in order to obtain a result which establishes an equilibrium between different situations (Minority Schools in Albania, Advisory Opinion, 6 April 1935, PCIJ ser. A/B No. 64, p. 19). ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries also allows for separate measures to safeguard the maintenance of characteristics as a group (art. 4 (1)).

59. Problems connected with efforts to take special measures arise from the fact that they require distinctions based on group membership, while the application of such distinctions may be perceived as excluding those who do not fully meet the criteria. With the best of intentions, unexpected and unwanted consequences might arise. The very necessity of classifying ethnic groups in order to establish rules for positive measures can in some cases lead to discrimination, and it is often objected to by the minorities themselves.

60. One possibility is to use a system of voluntary self-identification with a given ethnic or national community, an approach used in the legislation of some countries. However, when the distinctions made involve access to scarce resources, it may not be wholly satisfactory to rely on subjective self-identification.

61. The complications increase when minorities are provided with a degree of autonomy or exclusive control over land and natural resources in a given region. Autonomy may include control over family law and similar matters (non-territorial autonomy based on personal membership) or control over a given region (territorial autonomy). Such autonomy may be required to shield the minority against deprivations and/or assimilation, but it also generates dilemmas for the preservation and protection of individual rights for all, including freedom of movement.

Guideline 5: The role of the development process in removing economic and social obstacles to cooperation and mutual respect among all groups in society

62. For some time it was assumed that development, in the sense of technological modernization, would reduce or eliminate traditional national and ethnic conflicts and even reduce the intensity of religious confrontations. This would result, it was often thought, from advanced education and urbanization and from reduction in economic disparities. Today, we know that development and so-called modernization have tended to increase rather than decrease national and ethnic identification and inter-ethnic cleavages.

63. The causal factors are several, but two stand out. Firstly, development often tends to increase rather than decrease economic disparities by creating prosperity for some and deprivation for others. Secondly, groups attach different values to different kinds of development. Some emphasize environmentally safe and sustainable development which preserves traditional lifestyles and thereby the possibility of preserving the established cultural basis of dignity, while others favour quick technological transformation even when environmental degradation results and lifestyles are disrupted.

64. More troublesome is the possibility that decisions concerning developments are made in one part of a country, often the urban or metropolitan centre, but the consequences for the environment and lifestyles are felt in another part, among people who did not participate in the decision.

65. Development policies are in many cases adopted and implemented without sufficient consultation with the people living in the region concerned. Major hydroelectric projects, dams, irrigation schemes and other projects are sometimes carried out without giving due attention to their impact and on the local people who have traditionally lived in that region. Their lack of political influence may lead to disastrous consequences for them, even when there is a net economic gain for the country as a whole. Serious problems arise if natural resources are exploited in such a way that the possibility of survival on the basis of the traditional way of life is destroyed.

66. Conversely, when development projects are directed towards improving conditions in areas whose economic development has been lagging they can substantially improve the relations between the different national or ethnic groups. It would greatly increase the level of trust among the groups if the local people were empowered, through their representatives, to take part in all decisions affecting them. Particular attention should be paid to the impact of development policies in regions inhabited by minorities living in a relatively small area. Development projects affecting such territories should be based, to the largest extent possible, on free and informed consent, and wherever possible such projects should be decided upon and administered by the local representatives of the minorities.

67. Depriving areas of the natural resources on which they depend for their livelihood should never be allowed to take place unless the affected population has been provided with a voluntarily accepted resettlement option or effective compensation. It would probably go too far to give them an effective veto, but when they can demonstrate that proposed projects would

have serious negative consequences for them, Governments should pay due attention. On the other hand, the representatives of the local people, whether of the same or different national or ethnic groups as the national majority should be encouraged to submit proposals for projects that would positively affect their region. Preferably, they should also be given the possibility and the capacity to carry out the projects by themselves, with national and international support and funding where applicable.

Guideline 6: The necessity of ensuring that measures adopted to protect minorities also respect the human rights of majorities

68. This point has been addressed on several occasions in the preceding pages. The general principles of equality and non-discrimination require that minorities must not be given privileges that cannot be enjoyed by the majority. This does not exlude that measures adopted for minorities can be reserved entirely for them, as long as similar measures are also adopted for the majority. As stated in the Convention on the Elimination on All Forms of Racial Discrimination (art. 2, para. 2), however, special measures shall in no case entail as a consequence the maintenance of unequal and separate rights for different racial groups after the objectives for which they have been adopted have been achieved.

69. In their pursuit of equality and non-discrimination, neither members of minorities nor of the majority are entitled to use means and methods that constitute violations of human rights. Extralegal execution, abduction, maltreatment, denial of freedom of movement and denial of contacts with other members of the majority society constitute violations, whether carried out by minorities or by Governments. The integrity and dignity of individual members of the majority must be respected by the minorities. In areas where minorities are dominant, they are not entitled to humiliate or terrorize members of the majority.

CHAPTER II. REVIEW OF RESPONSES BY GOVERNMENTS

A. General

70. The questionnaire transmitted to Governments, specialized agencies and non-governmental organizations is attached at annex. By 15 June 1991, replies had been received from 12 Governments, 1 specialized agency (UNESCO) and 5 non-governmental organizations. It is expected that a great number of additional answers will be received in the course of the next year. The other main source of information for the study will be the reports of States submitted over the last decades to United Nations treaty-monitoring bodies. Of particular importance will be the reports submitted under article 27 of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination. The following pages contain a synopsis of the replies received as of 15 June 1991. I have pointed out above that several non-governmental organizations in their replies have suggested that religious minorities should be included, which I will do in the final version of this study. I have also mentioned in the introduction that UNESCO in its reply has suggested that a more precise working definition of minorities should be used, and I have explained why at this stage I find it desirable to maintain a rather broad definition.

71. Some Governments have stated that in their countries there are no minorities as understood in the questionnaire. Reference has been made to paragraph 6 in the introduction to the questionnaire (see annex) which calls for information on nationalities, ethnic, linguistic or cultural groups "which in significant respects are different from other groups inside a sovereign State". In the responses of Chad, Cuba and Tuvalu it has been argued that significantly different groups do not exist. The response by the Government of Chad recognizes that the population is very heterogenous, that there are five major groups of people and that these speak 110 languages subdivided into 12 linguistic groups, but that all are subject to the same law with the same rights and duties.

72. The response from the Government of Tuvalu is interesting in that the islands are extended over a large area and that each island community is self-contained, which means that minority issues have not arisen.

73. All other responses give more or less detailed answers to the questionnaire. The synopsis below follows the sequence of the questions. Under each question the responses are given in alphabetical order of the States concerned.

B. Responses, question by question

(i) Do minority groups, as understood in this questionnaire (see introduction) exist in your country/in the country concerned? Please indicate whether these are settled minorities or recent immigrant groups.

CHINA

74. China is a unitary multinational State with a total of 56 nationalities. The term "minority nationalities" in China refers to all nationalities other than the Han nationality. They have a relatively smaller population and have a long history of residence within Chinese borders. They do not belong to any category of recent immigrant groups. According to the fourth national census carried out in 1990, in mainland China the Han nationality has a population of 1,042.48 million or 91.96 per cent of the total national population; the population of all the other 55 nationalities is 91.2 million or 8.04 per cent of the total. In comparison with the figures obtained in 1982, within a period of eight years, the Han population increased by 10.16 million people or by 10.80 per cent, while minority nationalities increased by 23.90 million or by 35.82 per cent.

COLOMBIA

75. There are currently 81 indigenous ethnic groups in Colombia, a total of more than 500,000 people speaking some 75 different languages. They inhabit 25 per cent of Colombian territory, have their own socio-cultural ethos, and are long-established minorities.

ECUADOR

76. There are both "settled minorities" and "recent immigrant groups".

FINLAND

77. Settled minorities

Swedish-speaking	300 000	6.0% of the population
Samis	5 700	0.1%
Romanies	7 000	0.1%
Greek Orthodox	50 000	1.0%
Jewish	1 300	0.0%
Finish-speaking in the autonomous Province of Aland	1 000	(4.2% of the population of Aland)

78. Recent immigrant groups

Immigrants	2 000	(net; 12,000 immigrants and 10,000 emigrants annually; incl. former Finnish citizens as well as foreigners)

Foreigners	28 000	(0.5% of the population)
- refugees	2 500	
- asylum seekers	2 500	
- embassy personnel	2 200	

GREECE

79. The Moslem minority of Thrace remained in the region after the conclusion of the Treaty of Lausanne (1923) and the exchange of populations that followed. The Treaty marked the end of the Greco-Turkish conflict and paved the way for the peaceful coexistence of the two neighbouring countries sharing the river Evros as their common border. The Lausanne Convention for the exchange of the Moslems of Greece and the Greek Orthodox Christians of Turkey of 1924 constitutes an integral part of the Treaty. The Treaty established a system protecting minority rights which was particularly progressive for its time. International protection of the minority is provided in the Third Section of the Treaty of Lausanne, according to its last article (45). The very same form of protection is provided for the Greek Orthodox populations of Constantinople, of Imvros and Tenedos, the number of which has been dramatically decreased. It should be added that article 14 of the Treaty of Lausanne provides for a further special status concerning the islands of Imvros and Tenedos. In violation of specific clauses of the above Treaty, this status was never established by the Turkish Government.

80. The above legal system provided the Moslems of Thrace with the chance to organize their personal and community life based on the laws and customs of Islam. As a matter of fact, the progress of the Moslem minority through time has been characterized by the continuous and dynamic cultivation of every aspect of their religious beliefs and culture. They are fully entitled to all constitutional rights of Greek citizens. They are also protected by the relevant provisions of the contemporary regional and international human rights instruments. The Moslem minority of Thrace consists of people of Turkish origin (50 per cent), of Pomaks (35 per cent) and of Tziganes (Gypsies 15 per cent).

MEXICO

81. There are minority groups which have been settled in Mexico since time immemorial. The 1990 General Population Census identified 56 peoples distinguished from one another by language, who represent 9 per cent of the country's total population.

82. In addition, the Government has admitted some 41,000 refugees of Guatemalan origin into Mexico, most of whom have been granted refugee status.

NORWAY

83. As requested by the Special Rapporteur, the term minorities in the following is used in a broad sense, meaning nationalities and ethnic, linguistic or cultural groups which differ in significant respects from other groups within the State. A distinction is also made between "recent immigrant groups" and "settled minorities".

84. The most recent official statistics on the demographic composition of the population list the following numbers of foreign nationals resident in Norway on 1 July 1990:

Europe	72,737
Africa	8,849
Asia	41,042
North and Central America	11,061
South America	6,793
Oceania	643
Unspecified or stateless	272
Total	141,397

85. During the 1980s, approximately 25,000 foreigners acquired Norwegian nationality. The number naturalized annually has been on the increase in recent years.

86. Among the so-called "settled minorities", the Sami people are the only minority group considered to be indigenous people in Norway. There is no official figure for the number of Sami living in Norway, but the population is estimated to be about 40,000. Most of them live in the northern part of Norway. Approximately 350 gypsies are Norwegian citizens.

87. A third minority group which should be mentioned in this connection is the so-called Kvener. They are of Finnish stock, descendants of Finnish immigrants who settled in northern Norway in the seventeenth and eighteenth centuries, and are estimated to number approximately 2,000.

PAKISTAN

88. Pakistan is an Islamic Ideological State and its minorities are those who profess religions other than Islam. Minorities in Pakistan are settled minorities.

SUDAN

89. We have settled minorities.

(ii) Are they recognized as separate minorities, or as nationals, ethnic or linguistic groups, in the legal and political institutions of the country? What obstacles have been encountered if any, concerning such recognition?

CHINA

90. The Chinese Government has maintained a policy that all Chinese nationalities, big or small, are equal, prohibiting discrimination against and suppression of any nationality, and ensuring the freedoms of all nationalities to use and develop their own spoken and written languages, to preserve or change their own traditions and customs, to believe or not to believe in any religion, and to practise any religion.

COLOMBIA

91. In Colombia indigenous peoples are recognized as ethnic and linguistic minorities. Decree No. 2001 of 1988, article 2, recognizes the "indigenous community as a group of families of Amerindian descent that share a sense of identity with their native origin, and preserve characteristics and values specific to their traditional culture, as well as internal forms of government and social control that distinguish them from other rural communities".

ECUADOR

92. This question introduces a term which has not been defined, namely "separate minorities", which, in the case of Ecuador corresponds neither to the sociological facts nor to the historical origins of the country's population. It is thus impossible to answer the question, in view of the ambiguity and the lack of a satisfactory definition which would clearly determine the scope of the expression "separate minorities".

93. Having made this point, Ecuador wishes to report that its Constitution and the associated legislation recognize the multicultural and multi-ethnic nature of its citizens (see section 5 of the report of Ecuador on the Second Decade to Combat Racism and Racial Discrimination, General Assembly resolution 44/52 and Economic and Social Council resolution 1990/49, and the observations by Ecuador on the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, in particular para. 4). Consequently, such recognition runs all the way through Ecuador's legal and political institutions. With regard to the linguistic status of the population, the Constitution (which has been in force since 1978) says: "The official language is Castilian Spanish. Quechua and the other indigenous languages are part of the national culture." (art. 1, para. 3). It adds that "it is a primary function of the State to strengthen national unity, to enforce fundamental human rights and to promote the economic, social and cultural progress of its inhabitants" (art. 2).

94. The Constitution was adopted by referendum in 1978, confirming the institution of universal, equal, direct and secret suffrage, which is compulsory for all persons able to read and write and optional for illiterates (art. 33). This general legal provision laid the basis for democratic and broadly participatory coexistence, which ensures that there are no problems regarding the recognition of national, ethnic or linguistic groups.

FINLAND

95. See reply to question (iii).

GREECE

96. Religious freedom of the Moslem minority is protected by the relevant constitutional provisions concerning the freedom of religious conscience and the free exercise of worship (art. 13, paras. 1 and 2 of the Greek Constitution), as well as by the corresponding provisions of the Treaty of Lausanne (arts. 38, 39 and 40), which also require observance of the clauses of Public Order, Public Morals and National Defence contained in its text.

97. The status and competence of three Moslem muftis of Thrace are provided by law, the latest of them Law 1920 of 4 February 1991. The mufti, apart from his religious competence, holds jurisdiction over his co-religionists on subjects of family and inheritance law, as well as on their personal status. In consideration of the aforementioned, legislation requires a candidate mufti to have a number of qualifications (e.g. university degree, experience) adequate to guarantee equitable dispensation of justice, as well as the principle of personal and functional independence of the judge. The mufti, when exercising his competence, implements the holy law of Islam, the sharia.

98. The mufti's judicial jurisdiction is not provided by any valid international conventional obligation of Greece. It has been granted by the Greek legislature to the moslems of Thrace in order to permit them to express their family bonds and inheritance practices according to their religious beliefs.

99. A series of laws and administrative acts enacted the relevant provisions of the Treaty of Lausanne that concern minority education and language teaching, observation of Islamic holidays, school celebrations (holidays), etc. Minority language is taught in all villages and towns where minority members live. The vast majority of the minority teachers who are responsible for language courses are public servants. Members of the minority are also entitled to an interpreter before the courts.

MEXICO

100. The Government of Mexico has recognized the existence of these groups, which are an extremely important part of Mexico's cultural heritage.

101. Accordingly, the development and preservation of their identity is encouraged. To this end, the Federal Government has established the National Institute of Indigenous Affairs, a body with the special task of promoting education and culture together with fair administration of justice for the indigenous populations.

102. Furthermore, at its current session the Mexican Congress will consider the following proposal by the Executive to amend article 4 of the Constitution in order to allow the different indigenous peoples to reassert their full social, cultural and legal identity:

> "The composition of the Mexican Nation is multicultural, being based originally on its indigenous peoples. The law shall protect and promote the development of their languages, cultures, practices, customs, resources and specific forms of social organization and shall guarantee their members effective access to State justice. As regards trials and proceedings relating to agrarian matters in which they are parties, their practices and legal customs shall be taken into account in accordance with the provisions established by law."

NORWAY

103. Norway does not have special procedures for formal recognition of minorities. If minorities are granted special rights, or if special measures are implemented concerning minorities (e.g. the use of minority languages, educational and cultural measures, etc.), this is normally organized by the sector involved.

104. The status of the Sami people is established in both the Constitution and the Sami Act.

105. An amendment to the Norwegian Constitution of April 1988, article 110 (a) states:

> "It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life."

106. There are similar provisions in section 1-1 of the Sami Act (June 1987), which also established the Sami parliament, a body with some executive powers, and with a consultative status vis-à-vis the national authorities where questions concerning the Sami population are involved. The assembly was constituted and opened by the King on 9 October 1989. The 39 members of the assembly are elected by and among registered Samis through a process identical to the general elections.

PAKISTAN

107. They are recognized as religious minorities. No obstacles were encountered concerning their recognition as such.

SUDAN

108. They are considered as nationals. There were no obstacles encountered in such recognition.

(iii) Does such recognition consist in a federal structure, devolution of autonomy, or does it take other forms? Please describe, and indicate the obstacles encountered, if any.

CHINA

109. The Government has adopted a regional national autonomy policy of promoting national cooperation, mutual help and joint prosperity for all nationalities. Under the State's unified leadership, regional national autonomy is exercised in areas inhabited by minority nationalities and by autonomous governments established to exercise such autonomy. By the end of 1990, China had established 159 regional autonomous governments, of which 5 are in autonomous regions, 30 in autonomous prefectures and 124 in autonomous countries.

The National Regional Autonomous Law of the People's Republic of China stipulates that autonomous regions may exercise autonomy in the fields of legislature, economic planning, finance, economic management, administration of culture and education.

COLOMBIA

110. This recognition is expressed through the respect by the State for the autonomy of the indigenous peoples, which is designed to strengthen decision-making capacity and which promotes genuine participation, through which the indigenous peoples manage their own development and freely exercise the right to self-determination over matters affecting the life of their community.

111. The indigenous communities are authorized to administer their own territory, and to take independent decisions relating to development projects carried out on their territory through, inter alia, two institutions: the resguardo (protected indigenous area) and the cabildo (council). The first is "a special kind of socio-political legal institution, constituted by an indigenous community which, by virtue of a communal title deed, owns its territory and administers matters relating to the territory and to its own internal affairs through an organization that is in harmony with Indian law and customs or their cultural patterns and traditions" (Decree No. 2001 of 1988, art. 2). The second is "a special public body, whose members are elected indigenous people recognized by an Indian land-owning community established on a specific territory; it is responsible for the group's legal representation and for performing the functions vested in it by law, and by the group's usage and customs. The members of the cabildo must belong to the community that elects them, and their election shall be carried out in accordance with the provisions of Act 89 of 1890 or in accordance with their own traditional forms of organization (Act 89 of 1890, art. 3; Decree No. 2001 of 1988, art. 2).

ECUADOR

112. The different terms adopted in the question confuse concepts belonging to the widely accepted political law regarding the form taken by the State with domestic rules relating to the political administration of States. Ecuador is a sovereign, independent, democratic and unitary State. Sovereignty is vested in the people, who exercise it through the political institutions. The recognition mentioned in reply to question (ii) above, is subject, in the administrative sphere, to the following provision of the Constitution:

> "The territory of the State is indivisible. However, for the purposes of local government, provinces, cantons and parishes shall be established. The law shall determine the requirements for them to have that status. Demarcation of the boundaries of the provinces, cantons and parishes shall not add or take away territory." (art. 117)

113. This is the context in which to consider "local autonomy" and "other forms" determined by the law, which recognizes the structure, composition and functioning of the local government system and its effective application to the principle of autonomy (Constitution, art. 122).

FINLAND

114. Settled minorities

Local autonomy:

Aland, Autonomy Act of Aland of 1951. In 1991 a bill concerning a reform of the Autonomy Act passed its first reading in Parliament.

Other forms:

Swedish-speaking: section 14 of the Constitution Act of 1919: "The national languages of the Republic shall be Finnish and Swedish." Further provisions in the Language Act of 1922.

Samis: In 1990 a bill concerning a new section 52 (a) of the Parliament Act passed its first reading in Parliament. According to this provision the Samis are to be heard in Parliament in all questions particularly relevant to them. At the end of 1990 Parliament passed an Act on the Use of the Sami Language before Authorities. This Act will come into force in the beginning of 1992. The Sami Delegation was established by decree in 1973. The decree has been renewed in 1990.

Romanies: There has been an Advisory Board for Gypsy Affairs since the 1950s. In 1990 the name of the Board was changed to the Advisory Board for Romany Affairs.

Greek Orthodox: The Greek Orthodox Church is a State church in Finland (Orthodox Church Act of 1969).

115. Recent immigrant groups

Foreigners (refugees, asylum seekers): The Foreigners Act of 1991.

116. Both groups

The Human Rights Conventions which Finland has ratified.

GREECE

117. In local government elections, minority populations vote for their municipal and communal authorities (heads of local councils, mayors, town councillors). In villages and towns with mixed populations, Moslems elect their local government representatives together with their Christian fellow-countrymen.

MEXICO

118. Under the proposed amendment to the Constitution, indigenous people will have greater influence in those States in which they are settled.

NORWAY

119. See question (ii).

PAKISTAN

120. The religious minorities of Pakistan have been recognized as such in the Constitution of the Islamic Republic of Pakistan and their rights have been duly safeguarded in the Constitution.

SUDAN

121. Yes; recognition takes the form of federal structure.

(iv) Do minority groups maintain or enjoy cultural and/or educational institutions specifically devoted to meet their needs?

CHINA

122. The central Government has founded in Beijing the Central Institute for all Nationalities, the Central Institute for Folk Songs and Dances for All Nationalities, the Cultural Palace for all Nationalities, the Publishing House of Nationalities and the Illustrated Review and Magazine for all nationalities. Multinational provinces and autonomous regions, prefectures and counties have also established cultural and educational institutions and bodies for all nationalities. The State advocates that those nationalities which have written languages use their own languages in education and encourages both the Han and the minority nationalities to learn each other's languages.

COLOMBIA

123. Indigenous communities possess the cabildos or traditional authorities described above, which, in addition to administering the group's internal affairs, are designed to preserve the communities' cultural systems and specific modes of apprenticeship and education.

ECUADOR

124. Yes. There are cultural and educational institutions arising out of the historical origins of a multicultural and multi-ethnic population, which are peculiar to the specific identity of each "minority", within the overall concept described in the introduction to this document. In addition, pursuant to the Constitution, government plans have to take into account, first of all, the requirement that "the State shall encourage and promote culture, artistic creation and scientific research and ensure the preservation of the cultural heritage and artistic and historical wealth of the Nation" (art. 26). Furthermore, it is specifically provided that the "educational systems established in areas with a predominately indigenous population shall use Quechua or the appropriate indigenous language as the main teaching language and as the language for intercultural exchange" (art. 27, para. 9).

FINLAND

125. See answer to question (v).

GREECE

126. In Thrace there is a large number of institutions and unions formed by minority teachers.

MEXICO

127. The Government has established the National Institute of Indigenous Affairs in order to provide the different indigenous peoples in Mexico with easier access to cultural and educational institutions.

NORWAY

128. Recent immigrant groups run a great variety of voluntary organizations. These are mainly local organizations, although regional and national ones exist. Immigrant organizations, including religious communities, receive a substantial part of their funding from various government sources.

129. Except for religious teaching by the congregation (and to some extent schools initiated by North Americans, the British and French), recent immigrant groups have not yet started their own schools in Norway. Their needs are, as far as possible, met within the public school system. However, if they decide to start private schools, these may obtain public assistance, as long as they fulfil general requirements for such funding.

130. The following cultural and educational institutions for the Sami People should be mentioned.

131. The Sami Education Council is an advisory body to the Ministry of Education and other agencies in matters concerning education among the Sami people.

The main tasks of the Sami Education Council are:

(a) Educational plans;

(b) Curricula;

(c) Development of teaching materials;

(d) Pedagogical instruction;

(e) Development of Sami terms;

(f) Translation and interpretation services.

132. A Sami College of education was established in 1989. The college has about 80 students, most of whom are teacher-training students.

133. Regular broadcasting in the Sami language started in 1946. Today, the Norwegian Broadcasting Corporation transmits more than 300 hours a year through the Sami Radio in Karasjok.

134. The Ministry of Cultural Affairs is planning to establish a Sami Cultural Council based on the existing Committee on Sami Cultural Affairs. If such a body is established, it will probably be linked to the Sami Parliament.

135. General guidelines for our cultural policy for the years ahead have been drawn up in Reports to the Storting (Parliament). The major aim of these reports is to promote cultural democracy, and the key words are decentralization and participation.

136. Practical measures for the realization of the right to participation in cultural life, apart from the educational laws, include the following: there are annual budgetary contributions for cultural purposes at national, regional and local level. A new scheme has been in operation since 1986, by which the State transfers funds directly to the local and regional authorities. The State also finances the Norwegian Cultural Fund, which aims to stimulate cultural activities at all levels.

PAKISTAN

137. Yes.

SUDAN

138. Minority groups enjoy cultural and educational institutions in their areas and where it is possible.

(v) Do linguistic minorities, including recent immigrant groups, have the freedom and possibility to receive any part of their education in their own language?

COLOMBIA

139. Decree No. 1142 of 1978 recognized ethnic pluralism and established the right of indigenous communities to receive an education in harmony with their specific socio-cultural and economic features. The decree ended the traditional system of providing indigenous people with an education that was imposed upon them. Thereafter, individualized curricula began to be drawn up, adapted to each of the various ethnic groups and designed to allow them to preserve and develop their mother tongues, while simultaneously allowing them gradually to master the national language.

140. Similarly, Decision 3454 of 1984 established the Ethnic Education Group within the Ministry of Education, in order to promote ethnic education programmes within indigenous communities.

141. The main aim of all the steps taken in the field of education has been to strengthen the indigenous inhabitants' social decision-taking capacity concerning their own destiny as a fundamental factor for the exercise of political rights and self-determination.

142. Decree No. 2230 of 1986 established the National Committee of Indigenous Linguistics, presided over by the Colombian Institute of Anthropology (ICAN), to advise the Government on the framing of policies connected with research, dissemination, protection, teaching, the training of ethno-linguists and the preservation of the Amerindian languages spoken within the national territory.

ECUADOR

143. Yes. However, a number of points need to be explained. Under the Constitution "Foreigners are, in general, entitled to the same rights as Ecuadorians, subject to the restrictions laid down by the Constitution and by law. Foreigners are excluded from exercising political rights" (art. 14). As the question implicitly involves the definition of "recent immigrant groups", it should be mentioned that the Constitution, through the State, "encourages and facilitates selective immigration. Foreigners shall be required to pursue the activities for which they were given authorization" (art. 15). The group of recent immigrants includes foreigners protected by the right to asylum, as well as the right to refuge, which are covered by the Constitution (art. 17), by the relevant international conventions which have been incorporated into national legislation and by domestic law. In this connection it should be emphasized that "the State shall guarantee all individuals, whether men or women, subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set out in the declarations, covenants, agreements and other international instruments in force" (art. 44).

144. Lastly, it should be mentioned that under government agreements and with the authorization of the Ministry of Education, pre-school, primary and secondary educational establishments that provide teaching in English, French and German, are recognized and operate normally, thus facilitating the education of foreigners resident in Ecuador and of Ecuadorians who wish to attend such establishments.

FINLAND

145. Settled minorities

(a) Swedish-speaking: The Government maintains educational establishments of many kinds from primary and secondary schools to various forms of professional and adult education in both of the national languages. One of the universities, Abo Akademi (in Turku), has Swedish as its language of instruction;

(b) Samis: Both under the Comprehensive Schools Act and the High Schools Act the language of instruction in the four northern Sami municipalities may be Sami, and Sami may be an optional subject in the curriculum of the comprehensive schools and the high schools in these

municipalities. The Act Governing Occupational Training for the Samis stipulates that the languages of instruction are Finnish and Sami. At university level the Sami language is taught in three universities and there is a yearly quota for Sami mother-tongue students in the comprehensive school training and a quota of one Sami student in the faculty of law at the University of Lapland;

(c) Romanies: So far, the Romany language has not been taught in schools in Finland. Since this school year, the Romany pupils in the region of Helsinki can learn their language at evening classes.

146. Recent immigrant groups

The immigrants and refugees of comprehensive school or high school age are taught, as far as possible, their mother tongue, the immigrants, however, only if there is at least five pupils in the instruction group. The main obstacle is finding qualified teachers.

GREECE

147. According to the reference made under question (ii) above, Moslems of Thrace are entitled to be taught in their own language on an everyday basis. The non-written language of Pomaks cannot be taught; however, the Pomaks are encouraged to use it, as well as to exercise their local customs and habits freely. The same applies for the gypsies.

MEXICO

148. This possibility exists in respect of elementary education in several States in which there is a large indigenous population. It is not yet available at the secondary level or in vocational training. However, a number of higher-education establishments offer courses in Nahuatl and Maya, and students studying anthropology, particularly at the National School of Anthropology, are required to study one of the country's indigenous languages as part of their curriculum.

NORWAY

149. The Norwegian Government allocates funds for the special educational needs of linguistic minorities, including recent immigrant groups. A substantial proportion of these funds is used for teaching the mother tongues of such minorities, mainly at the compulsory primary and lower secondary levels of the school system. However, such teaching is not a legal right.

150. Approximately half of all the minority language students thus received such education through the public school system. The highest proportion of students receiving education in their mother tongue is found among native Urdu speakers (approximately two thirds).

151. Since 1967, the Act concerning primary and lower secondary education has included the right to learn Sami. The Act on primary school has recently been amended to strengthen that right. Children in Sami districts are entitled to

be educated in or be taught the Sami language, and the municipal council may make such education compulsory. Outside Sami districts, children with a Sami background may receive education in Sami; if there are at least three Sami-speaking pupils in a school they may demand such education. The amendments will enter into force in autumn 1991.

152. In December 1990, the Norwegian Storting (Parliament) adopted amendments to the Sami Act to give Sami speakers the right to use their language in contact with local and regional authorities.

153. Six municipalities in the counties of Finnmark and Troms, where the Sami language has a strong position, form an administrative area for the Sami language, where special rules apply. It is estimated that around 7,500 people in this area are Sami speakers.

154. In the administrative area, local public bodies are obliged to answer in Sami if a member of the public makes contact in the Sami language, orally or in writing. Regional public bodies whose authority extends across the whole or part of the administrative area shall likewise answer in Sami if they receive written applications from members of the public. The King may extend these duties to other public bodies (outside the administrative area or nationally).

155. Employees in public bodies to which these rules apply have a right to paid leave in order to learn Sami, if the body needs such competence. There is no requirement for all employees to master Sami, and the body may use interpreters if this is appropriate.

156. In addition to these general rights, extended rights are proposed in the judicial sector, the health and welfare sectors and vis-à-vis the Church. In the judicial sector (the police, the courts, the penal institutions, etc.), the Courts of Justice Act today states that a person who does not understand Norwegian is entitled to an interpreter. The rules cover Sami, but also other languages. The Act extends this right for Sami speakers. If they wish to use Sami in court, they are entitled to do so whether or not they understand and master Norwegian, and the court must provide an interpreter. Whenever the right to submit oral applications exists, e.g. a demand for appeal, the Sami language may be used. The same rights apply to patients/clients in health and welfare institutions (e.g. hospitals) and where individual church services are concerned.

157. Official announcements which are directed especially at the population in the administrative area shall appear in both Sami and Norwegian. Laws and regulations which especially concern the Sami population shall be translated into Sami. Official forms to be used in contact with public bodies in the administrative area shall be available in both Sami and Norwegian.

158. Municipal councils have the authority to decide that in the whole or parts of their administrative areas Sami shall have equal status with Norwegian. This applies only to the internal administration.

159. A Sami Language Council is to be established. The council's field of work will be to preserve and develop the Sami language, to give advice and assistance to the public and the authorities in language questions, to inform people about the rules, to produce a yearly report on the status of the Sami language, etc.

160. Everyone shall have the right to learn Sami, either through adult education or in accordance with the Act concerning primary and lower secondary education.

PAKISTAN

161. Since there are no linguistic minorities in Pakistan, we have no comments on this question.

SUDAN

162. No, for several reasons: the vast number of dialects and languages that exist in this country; most leaders have refused to use their own dialects and languages; most of these dialects and languages are not sufficiently well developed to be used in education and communication.

(vi) Do such groups or their representatives have the right and possibility to participate in the planning, implementation and benefits of development policies?

COLOMBIA

163. From the 1980s onward, the Government of Colombia began to implement an ethnic development policy in respect of the indigenous communities, whereby the indigenous inhabitants became involved in defining the processes by which such policies were drawn up and in designing and implementing plans and projects likely to affect them in one way or another.

164. Far from preventing racial groups from participating in politics and in the country's social, economic and cultural life, and inhibiting their development, government policy guarantees them the conditions necessary to organize in accordance with their usage and customs, pursuant to Act 89 of 1890, and to strengthen participation by the indigenous inhabitants in decision-making on policies and programmes that affect them, by establishing a series of mechanisms involving such participation, such as Municipal Rehabilitation Councils, Indigenous Affairs Policy Committees and the Sub-Committee of the Commission on Mining Legislation Studies and Reform.

165. In addition, the Ministry of Agriculture issued Decree 2001 of 28 September 1988, establishing "indigenous cabildos" as "special public bodies" responsible for governing the indigenous inhabitants and administering their territories, as has already been stated above.

166. Furthermore, self-management in the choice, formulation, implementation, supervision and direct running of the population's own small-scale community projects was reinforced.

167. In this context, the Government has supported efforts made by the indigenous populations to make suitable use of their land, as a means of improving their welfare and guaranteeing them a stable economy. These programmes, which have been implemented with due regard for the traditional economic bases of the communities, hinge on increased production of small surpluses for trade, guaranteed provision of basic services and improvement of the infrastructure.

168. Measures taken in the agricultural sphere have been extremely important. Progress has been made in programmes for large and small livestock-raising, livestock farms, mills and presses, fish ponds, crop improvement and diversification, marketing and soft credit.

ECUADOR

169. They possess this right indirectly. Within the Andean integration process there are a number of community instruments that reflect common policies and decisions which are incorporated into national development plans. One large "recent immigrant group", in particular, is from Ecuador's neighbour Colombia. A constant concern of the "good-neighbour policy" between Colombia and Ecuador is to ensure integration and to carry out development measures in both countries on a multi-disciplinary basis. Similar arrangements are being planned with Peru.

FINLAND

170. All Finnish citizens have the same political rights in Finland. Scandinavians who have resided for two years in Finland have the right to vote and to stand for election in local elections. Other foreigners resident in Finland have the right to be members of political parties and to publish. Everyone has the right of public assembly and to demonstrate. Within the framework of what is mentioned above, there are no exceptions concerning the minorities.

171. Note the activities of different bodies and associations, e.g. the Sami Delegation and the Advisory Board for Romany Affairs.

GREECE

172. When concerned, the municipal and communal representatives of the minority and its deputies in the Parliament (usually two) participate in regional development planning.

MEXICO

173. In recent years the indigenous population has become more involved in planning and decision-making in respect of development policies within their communities. The National Solidarity Programme "gives priority to indigenous peoples and communities".

NORWAY

174. Foreigners with three years' continuous residence in Norway have full voting rights in local and regional elections. In addition, the Ministry of Local Government has appointed a liaison committee between immigrants and Norwegian authorities, where all matters of principle related to Norwegian immigration/immigrant policy are discussed. In addition, some important policy documents are sent out for review to immigrant organizations.

175. The legal status of the Sami People and the Sami Parliament are described under (ii) above.

PAKISTAN

176. Yes.

SUDAN

177. They do participate.

(vii) In regard to the economic conditions of minority groups, is their average standard of living, life expectancy and child mortality rate approximately the same as that of the national average? If not, is it lower or higher than the national average?

Where federal structures exist based on criteria of nationality, the response to question (vii) should compare both the situation among the different nationalities within the federation and that of the different ethnic, cultural and linguistic groups inside each of the member States, or republics, of the federation.

COLOMBIA

178. The economic circumstances and standard of living of the indigenous communities are lower than those of the rest of the population. However, their right to health has been furthered by the provision of free health care based on traditional medicine as practised in the various ethnic groups. Measures have been adopted to implement Ministry of Health Decision 10013 of 1981, which provides that health care delivery shall take into account the cultural characteristics of each community. Both the supply of medicine and health care are free for indigenous inhabitants. This measure has considerably reduced infant mortality and raised life expectancy in recent years.

ECUADOR

179. A high proportion of "recent immigrant groups" (about 90 per cent) come from Colombia and have historically settled in Ecuador's border areas, particularly in the provinces of Sucumbios, Napo, Esmeraldas and Pichincha (Canton of Santo Domingo de los Colorados). It has been established that these movements are cyclical, and mainly involve groups of peasants who are

essentially seeking better economic opportunities and who usually settle, in particular, in rural areas. They are thus assimilated into the national population, and of course share a somewhat precarious existence, in view of the limited or non-existent infrastructure.

180. Their life expectancy is certainly similar to the local population's. The figures from the national census, carried out on 25 November 1990, are not yet available.

FINLAND

181. Yes.

GREECE

182. The Muslim minority has the same average standard of living, life expectancy and child mortality rate as the rest of the population of Greece's northern provinces, which are approximately the same as those for the rest of the country. The programmes of regional development with middle- and long-term objectives already put into practice are to the benefit of all, Christians and Muslims alike.

MEXICO

183. In its explanation of the reasons for the proposed amendment to article 4 on 7 December 1990, the Executive stated that "96.5 per cent of the indigenous population live in localities rated as highly marginal".

184. The 637 rural minicipalities with an indigenous population of over 30 per cent - a quarter of all Mexico's municipalities - have been classified as highly or very highly marginal. Almost all of the 30 per cent of the indigenous population who are resident in municipalities classified as urban live in conditions of poverty and deprivation ... illiteracy, infant mortality, malnutrition and the associated mortality and low life expectancy are disproportionately high in indigenous communities, and some indicators are twice the average levels.

NORWAY

185. There are no recent statistics which indicate general significant differences between minorities and other groups in the areas mentioned here. There are, however, certain indications that recent immigrants from developing countries tend to have a somewhat lower standard of living than the average Norwegian. Existing data also show that the standard of living in some of the areas with a considerable concentration of Sami people is somewhat lower than average.

PAKISTAN

186. Same as that of the national average.

SUDAN

187. Not the same in the case of some minorities because of the natural disasters and the continuing civil war in the southern part of the country.

(viii) If some minority groups are disadvantaged relative to the national average, have they been provided with the opportunity to improve their situation by their own efforts?

COLOMBIA

188. The Government has given priority to designing projects in support of efforts made by the indigenous communities to improve their situation. Accordingly, large areas of land have been handed over to the indigenous inhabitants, and recognition extended to the rights of indigenous communities over traditionally occupied territories for rational exploitation, ownership and use in keeping with nature and in accordance with their traditional knowledge.

189. On this basis, indigenous families are entitled to use and hold the land assigned by the cabildo or traditional authorities, in accordance with custom (Act 89 of 1890, art. 38). The cabildo allocates plots of land in usufruct to families. These awards have to be respected in accordance with the usage, customs and tradition of each community.

ECUADOR

190. Ecuador is interested in enlisting the cooperation of various organizations of the United Nations system, and in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), with which it has been carrying out joint activities since November 1990, to improve living conditions in Ecuadorian villages in which there are Colombian migrants. These activities have been carried out in conjunction with the Ecuadorian Episcopal Conference and the Ecuadorian-Colombian Commission for Neighbourly Relations.

FINLAND

191. Yes.

GREECE

192. See reply to question (vii) above.

MEXICO

193. The National Solidarity Programme is specifically designed to improve the overall circumstances of the indigenous population.

NORWAY

194. Several special policy measures exist, e.g. mother-tongue teaching and interpreting services, which are intended to improve the situation of immigrants.

195. As a consequence of the special legal status of the Sami people (see (ii) above) affirmative action is considered to be the official policy towards the Sami people, and they benefit from affirmative measures in various fields. In addition to legal measures, the Government also employs financial and organizational measures to implement the Sami Policy. Approximately NKr 200 million is used each year for direct State support of various Sami activities, institutions, etc.

PAKISTAN

196. There are no disadvantaged minority groups in Pakistan. The Government makes special efforts to improve the situation of minorities in Pakistan so that they may not feel any sense of discrimination.

SUDAN

197. Yes, through economic development and pursuance of peace.

(ix) Have disadvantaged minority groups benefited from policies of affirmative action?

CHINA

198. The State supports and helps minority nationality regions in their economic, educational, cultural, scientific and technological development, as well as medical and health care, by providing them with human and financial resources and materials, and has set up corresponding institutions.

199. For historical reasons, the majority of Chinese minority nationalities inhabit the western part of the country, where conditions are poor; their economic development is thus lower, to a certain extent lagging behind that of the Han nationality area. Apart from ensuring that minority nationalities exercise extensively their civic, political, economic, social, cultural and educational rights, the Chinese Government has as always striven to narrow the gap in economic development between the minority nationality areas and the Han nationality area, so as to achieve the goal of joint development and prosperity for all nationalities. It has taken the following major steps:

1. It encourages peoples of all nationalities to carry forward the spirit of self-reliance.

2. It formulates various preferential policy measures and creates favourable conditions for development. For example, in Tibet, foreign exchange earnings are not required to be turned over to the central

Government; instead, they can be retained and spent within the autonomous region. Land is used by individual households while stockraising is privately operated and independently managed. This policy will not be changed for a long time. And for a considerable period, no taxes are payable in respect of agriculture and animal husbandry.

3. The State helps minority nationality areas in their development by providing them with financial and human resources as well as materials. For instance, it has systematically invested in building up modern facilities such as the iron and steel industry, hydropower stations, railways and oil fields. This is done in an effort to promote the economic development of these areas. Furthermore, every year the State provides minority nationality areas with substantial financial subsidies; for example, 98 per cent of annual expenditure for Tibet comes from a central-Government subsidy. In 1989, the State established a "Subsistence fund for minority nationality-inhabited and poverty-stricken areas" and makes an allocation each year to ensure that they have enough clothes and food.

4. It mobilizes all social forces and more advanced areas to support minority nationality areas. For example, in Tibet, 43 modernization projects are being implemented through aid and coordination.

200. From a historical perspective, the pace of development of China's minority nationality areas is rapid. The average income per head of all national autonomous regions for 1989 was 2.3 times higher than for 1981 while the net income for peasants also doubled. Infant mortality dropped even faster. For instance, in the Inner Mongolia Autonomous Region, infant mortality went down from 10.433 per cent for 1959 to 7.176 per cent for 1961 and 4.224 per cent for 1981. Life expectancy for these areas has also risen sharply, from around 30-40 years before the founding of new China to over 60 years.

COLOMBIA

201. Indigenous communities have benefited extensively not only from land policy but also from the strengthening of their community governments. Thus, the various ethnic groups have obtained improvements in areas such as education, the economy, the revival and strengthening of their traditional culture, and their capacity to enter into relations and negotiate with other sectors of the national population and the Government itself. This was all examined at length in the reports mentioned above.

ECUADOR

202. Yes. Since 1982, thanks to the political will of the Governments of Ecuador and Colombia to document their nationals present in each other's territory without authorization, it has been possible to implement an extensive programme to regularize the situation of those persons. Whenever protection has been requested by Colombian citizens in accordance with the Convention and the Protocol relating to the Status of Refugees, the Ecuadorian authorities have granted such status, after consideration of each case.

FINLAND

203. Settled minorities

Yes. There are, for example, some quotas for the Swedish-speaking and Sami students in the universities. Furthermore, the Act of 1975 on the Improvement of the Housing Conditions of the Gypsies seems to merit consideration. See also question (xi) below.

GREECE

204. There exists a social network aiming at the implementation of a more effective social care system for the benefit of the Muslim minority. A typical example is that of the National Care Organization, focusing on the foundation of nursery homes and medical centres. Municipal authorities contribute a great deal to the field of social welfare (centres with free medical care for the aged, etc.).

MEXICO

205. Yes.

NORWAY

206. See question (viii) above.

PAKISTAN

207. As mentioned above, there are no disadvantaged minority groups in Pakistan. However, the members in Pakistan have benefited from the policies made for them by the Government of Pakistan.

SUDAN

208. Yes, especially in education.

(x) Do minority groups have direct representation in national legislatures?

COLOMBIA

209. The process under way in Colombia, whereby the National Constitutive Assembly, which was democratically elected in the elections of 9 December 1990, is examining reforms to the Constitution is of the utmost importance. Two representatives of the indigenous peoples, Lorenzo Muelas Hurtado and Francisco Rojas Birry, are participating in that process, and are striving to achieve specific recognition for indigenous communities in the Colombian Constitution.

ECUADOR

210. As indicated in the reply to question (v), "recent immigrant groups" may not exercise political rights (Constitution, art. 14). As far as "settled minorities" are concerned, under the interpretation given in the introduction, they are entitled to such rights: "Ecuadorian citizens are entitled to elect and stand for election ..." (Constitution, art. 32). As regards direct suffrage, the last paragraph of the reply to question (ii) above should be consulted.

FINLAND

211. Settled minorities

No. Samis: see (iii); section 52 (a) of the Parliament Act.

GREECE

212. In Parliament, there are two Muslim deputies elected independently in the constituencies of Xanthi and Rodopi.

MEXICO

213. No, although individuals from these groups have occupied parliamentary seats in the Chamber of Deputies.

NORWAY

214. No.

PAKISTAN

215. The minorities elect their representatives to the National as well as Provincial Assemblies on the basis of adult franchise through the separate electoral system as provided in the Constitution of the Islamic Republic of Pakistan.

SUDAN

216. They do.

(xi) Have members of minority groups benefited from agrarian reform measures or resettlement programmes?

COLOMBIA

217. The obligation of the Government of Colombia to establish resguardos for indigenous communities and to recognize their right of land ownership, with due observance for their forms of ownership and use, is stipulated by Act 31 of 1967, article 7, paragraphs 1, 2 and 3 and articles 11 and 13 and by Act 153 of 1987, article 318.

218. In addition, legislation relating to resguardos is supplemented by Act 35 of 1961 and by agrarian reform Act 30 of 1988, which provides for the free transfer of land to those indigenous communities without land or with insufficient land. The resguardos in Colombia, those of colonial origin and those established by the Colombian Land Reform Institute (INCORA), are:

Type of resguardos	Number	Total (hectares)	Number of beneficiaries
Colonial	81	399 688	156 680
Established by the Colombian Land Reform Institute (INCORA) 1967-1986	158	12 380 780	127 697
Established by the Colombian Land Reform Institute (INCORA) 1986-1989	63	13 360 641	27 397
TOTAL	302	26 141 109	311 774

219. Between January 1982 and December 1989 the Government transferred 18,949,405 hectares of land to the indigenous communities, thereby establishing 157 new indigenous resguardos.

220. The benefits of government policy on indigenous land ownership are undeniable, as every day more families have improved their standard of living thanks to the distribution of land on which they are able to settle and pursue their productive activities.

ECUADOR

221. Yes, as detailed under section 2 of the report of Ecuador on the Second Decade to Combat Racism and Racial Discrimination.

FINLAND

222. Settled minorities

Samis: In 1946-1947 the State resorted to special measures with a view to securing the existence of Skolts who had moved from the Petsamo area, ceded to the Soviet Union in 1944, to the Finnish municipality of Inari. These measures included the reserving of areas for the settlement of these peoples, as well as the provisions of funds for the construction of houses and acquisition of reindeer and fishing equipment. By the 1955 Act on the Settlement of Skolts the ownership of the houses and buildings thus erected, as well as of the land needed for them, was granted to the Skolts without consideration. By the Skolt Act of 1984 these provisions have been renewed and updated.

GREECE

223. The Moslem minority of Thrace is mostly oriented towards agriculture and is, therefore, entitled to all relevant agricultural loans, subsidies, etc. Any land or other agrarian reforms are to the direct benefit of peasants of Moslem faith.

MEXICO

224. Article 27, section VI, of the Constitution of the United Mexican States establishes the historical right of indigenous groups in respect of communal property. This provision has enabled indigenous peoples to recover their communal property or to be given land under the ejido regime of land ownership. Section VII of the same article is extremely clear in this respect:

> "Those population groups which de facto or de jure preserve their communal system, shall be entitled to communal usufruct of the land, woods and waters which belong to them or which have been, or may be, restored to them."

NORWAY

225. This is not a relevant question in Norway.

PAKISTAN

226. Yes.

SUDAN

227. They do.

(xii) Do members of minority groups have unimpeded possibility of contact with related ethnic, cultural or linguistic groups in other States?

COLOMBIA

228. In Colombia there are national and regional organizations of the indigenous peoples, which, in recent years, have organized and taken part in international meetings. They are in permanent contact with organizations of indigenous peoples in other countries and with relevant international bodies.

ECUADOR

229. The Constitution and laws of the Republic of Ecuador guarantee this right. "The right of association and freedom to meet for peaceful purposes" are guaranteed by the State (art. 19, para. 13). Naturally, this right is not restricted to the national territory, but guarantees the right to establish any contacts they wish with groups abroad.

FINLAND

230. Yes.

GREECE

231. A great number of inhabitants of Thrace of Turkish origin have close contacts with neighbouring Turkey, where they often transfer their economic and social activities.

MEXICO

232. Yes.

NORWAY

233. Yes.

PAKISTAN

234. Yes.

SUDAN

235. They do, as it is open for everybody to move and mix within the country.

(xiii) What steps have been taken, and what obstacles have been encountered in ensuring that recent immigrant groups (as understood in this study, see introduction) are not subjected to racial discrimination and that they are ensured equality in the enjoyment of human rights and fundamental freedoms?

COLOMBIA

236. There have been no cases of recent immigration to Colombia.

ECUADOR

237. These are described in the replies to questions (viii) and (ix) above.

Note: The reports submitted by Ecuador to the Committee on Economic, Social and Cultural Rights and the report on the Second Decade to Combat Racism and Racial Discrimination should be consulted, as well as the comments made by Ecuador on popular participation in development.

FINLAND

238. Racial discrimination is a crime under Finnish law:

Penal Code 13:5

"Whosoever spreads statements or other notices among the public whereby a certain race or national or ethnic or religious group is threatened, slandered or insulted, shall be sentenced for incitement to discrimination against a population group to a fine or to imprisonment for at most two years."

Penal Code 13:6

"If an entrepreneur or someone in his service in business in the pursuit of his profession or another person in comparable activity or an official in the performance of his duties does not serve a customer in accordance with generally followed conditions, due to the race, nationality, ethnic group or religion of this person, he shall be sentenced for discrimination to a fine or to imprisonment for at most six months.

Also the arranger or the assistant of the arranger of a public amusement or a public meeting who in contravention to generally followed conditions refuses admittance to the amusement or meeting, on the basis of the race, nationality or ethnic origin or religion of the person seeking entrance, shall be sentenced for discrimination."

MEXICO

239. Guatemalan refugees currently settled in Mexico are entitled in practice to the fundamental rights laid down by Mexican legislation for Mexicans. The July 1990 reform of the General Population Act, whereby the legal status of "refugee" was recognized should be mentioned.

240. However, there are a large number of de facto refugees or displaced persons, who have made their own way into the labour market, particularly in large cities, but whose legal status still has to be settled if they are to lead decent and carefree lives. This also applies to an undetermined number of migrant workers from Guatemala who periodically enter the frontier States in south-east Mexico for the coffee harvest.

241. However, the Government of Mexico and the other Governments concerned are examining measures to ensure observance of the human rights of migrants, regardless of their migrant status.

NORWAY

242. The principle of non-discrimination is a well-established unwritten principle of Norwegian law.

243. Any person who claims that an administrative decision or regulation does not comply with this principle may address the appropriate court.

244. A new Immigration Act was adopted on 24 June 1988. The main purposes of the Act are to provide a legal basis for the control of immigration, to secure legal safeguards for the individual, and to protect refugees from persecution. These purposes are now explicitly stated in the Act (section 2).

245. In order to improve the position of the individual, considerable efforts have been made to formulate the provisions as precisely as possible, thereby reducing the discretion of the authorities. Moreover, a separate chapter of the Act is devoted to the procedure to be followed, and the right to legal aid has been extended.

246. A specific provision on discrimination has been added (section 3), reading as follows:

> "An alien in the realm has the same rights and duties as Norwegian citizens, unless applicable rules of law require otherwise."

247. The Norwegian Penal Code prescribes punishment for various types of racial discrimination. (The relevant sections are quoted in Norway's initial report submitted under article 40 of the International Covenant on Civil and Political rights, CCPR/C/1/Add.5 and 6, April 1977).

248. As regards the forming of attitudes, we refer to Norway's periodic reports under article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination. (The last report is CERD/C/159/Add.4 of 26 July 1989).

249. In this connection it should also be mentioned that Report to the Storting (Stortingsmelding) No. 39 (1987-88) on immigration policies was presented and debated in the Storting in autumn 1988. The report reaffirms as a central principle the concent of "equality" between the new immigrants and the host population. Regulated and controlled immigration will continue to be another central principle.

250. In recent years the Ministry of Local Government has supported a number of projects under the auspices of the Anti-Racist Centre, an NGO which runs various types of anti-racist activities, such as a local radio station with regularly scheduled programmes, and a so-called "crisis group". This is intended to come to the assistance of immigrants who suffer racial injustice, as well as to survey the extent and forms of racial injustice.

PAKISTAN

251. Since there are no immigrant groups of minorities in Pakistan, as understood in this study, we have no comments on this question.

SUDAN

252. They are mainly refugees under the protection of either the United Nations or the Government's Commission for Refugees, and their human rights and fundamental freedoms are ensured.

Annex

QUESTIONNAIRE

Introduction

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1989/44, entrusted Mr. Asbjørn Eide with the preparation of a report on national experience regarding peaceful and constructive solutions of situations involving minorities. The resolution was endorsed by the Commission on Human Rights in its decision 1990/105.

2. In its resolution 1990/5, the Sub-Commission expressed its deep appreciation to the Special Rapporteur for his progress report (E/CN.4/Sub.2/1990/46), endorsed the research methods proposed by him for the study and requested the Secretary-General to transmit the present questionnaire to Governments, specialized agencies, regional intergovernmental agencies and non-governmental organizations for their comments, views and relevant information.

3. The questionnaire is transmitted pursuant to the above mandate.

4. In responding to the questionnaire, Governments are not requested to duplicate information they have submitted under one of the reporting procedures within the United Nations system. Where relevant information has already been submitted in this way, it will suffice for them to make a reference to the appropriate report. It should be noted, however, that most of the questions below differ from those listed for the submission of State reports under existing treaty provisions, and it will therefore be appreciated if each question is studied carefully to provide responses which may be of use in completing this study.

5. While the main purpose of the study is to explore positive and constructive solutions, it is essential that the responses under each question also indicate the obstacles encountered, if any, and ways in which these have been overcome. This will facilitate the understanding of the best ways to handle such situations.

6. The study does not make use of a precise definition of "minorities". The term is used here in a very broad sense, meaning nationalities, ethnic, linguistic or cultural groups which in significant respects are different from other groups inside a sovereign State.

7. A distinction is made here between "settled minorities" and "recent immigrant groups". The latter is understood to mean aliens in general, immigrants who have not yet become citizens, refugees and asylum seekers, and migrant workers. Please indicate if distinctions are made along these lines regarding the recognition of all or any rights and in the granting of access to procedures and mechanisms for the enjoyment thereof.

8. Wherever there is a question related to the enjoyment by the minority groups of their own cultural institutions and practices, it is understood that such institutions must always operate within the limits of the internationally recognized fundamental freedoms and human rights of the individual.

Questions related to minority groups

(i) Do minority groups, as understood in this questionnaire (see introduction) exist in your country/in the country concerned? Please indicate whether these are settled minorities or recent immigrant groups.

(ii) Are they recognized as separate minorities, or as national, ethnic or linguistic groups, in the legal and political institutions of the country? What obstacles have been encountered, if any, concerning such recognition?

(iii) Does such recognition consist in a federal structure, devolution of power, local autonomy, or does it take other forms? Please describe, and indicate the obstacles encountered, if any.

(iv) Do minority groups maintain or enjoy cultural and/or educational institutions specifically devoted to meet their needs?

(v) Do linguistic minorities, including recent immigrant groups, have the freedom and possibility to receive any part of their education in their own language?

(vi) Do such groups or their representatives have the right and possibility to participate in the planning, implementation and benefits of development policies?

(vii) In regard to the economic conditions of minority groups, is their average standard of living, life expectancy and child mortality rate approximately the same as that of the national average? If not, is it lower or higher than the national average?

Where federal structures exist based on criteria of nationality, the response to question (vii) should compare both the situation among the different nationalities within the federation and that of the different ethnic, cultural and linguistic groups inside each of the member States, or republics, of the federation.

viii) If some minority groups are disadvantaged relative to the national average, have they been provided with the opportunity to improve their situation by their own efforts?

(ix) Have disadvantaged minority groups benefited from policies of affirmative action?

(x) Do minority groups have direct representation in national legislatures?

(xi) Have members of minority groups benefited from agrarian reform measures or resettlement programmes?

(xii) Do members of minority groups have unimpeded possibility of contact with related ethnic, cultural or linguistic groups in other States?

(xiii) What steps have been taken, and what obstacles have been encountered in ensuring that recent immigrant groups (as understood in this study, see introduction) are not subjected to racial discrimination and that they are ensured equality in the enjoyment of human rights and fundamental freedoms.